

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**THE MASCHHOFFS, LLC
Facility #60129**

Van Buren County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2014-AFO-04

TO: Corporation Service Company, Registered Agent
The Maschhoffs, LLC
505 5th Avenue, Suite 729
Des Moines, IA 50309

Gary W. Koch
Gislason & Hunter LLP
2700 S. Broadway – P.O. Box 458
New Ulm, MN 56073-3111

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and The Maschhoffs, LLC (The Maschhoffs) for the purpose of resolving violations resulting from manure discharges from The Maschhoffs' Keosauqua facility. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Ryan Stouder, Field Office 6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: THE MASCHHOFFS, LLC

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The Maschhoffs owns and operates two confined animal feeding operations located at 21392 Osage Avenue, Keosauqua, Iowa (North Unit #2) and at 21682 Osage Avenue, Keosauqua, Iowa (South Unit #1) (NE 1/4 of the NE 1/4 of Section 32, Henry Township, Van Buren County Iowa). The Maschhoffs purchased this facility in September 2010. The two units were constructed in 1994 and were considered adjacent facilities and combined into one site for manure management plan and site expansion purposes. South Unit #1 consists of one office building and five swine production buildings and North Unit #2 consists of five swine production buildings. South Unit #1 and North Unit #2 have an animal housing capacity of 7,490 head of swine (2,996 animal units). South Unit #1 and North Unit #2 utilize a shallow pit and drain to unformed manure storage structures.

2. On December 2, 2011, a representative from The Maschhoffs contacted DNR Emergency Response and stated that a manure release occurred at the South Unit #1. The Maschhoffs representative explained that a construction crew hit a standpipe and released approximately 100 gallons of hog manure to the drive and the adjacent field. The facility planned to scrape and spread the manure to a nearby field. The discharge did not impact a water of the United States. The incident was reported to the DNR within six hours of the manure release, but The Maschhoffs did not submit a 30 day written report.

3. On December 19, 2011, a representative from The Maschhoffs contacted DNR Emergency Response and stated that a manure release occurred at the North Unit #2. The Maschhoffs representative explained that a hog had escaped a pen and knocked over a standpipe which aided in blocking a waste line. The blocked waste line overfilled and discharged through a standpipe. The overflowing manure entered into a dry creek near the facility. The incident was reported to the DNR within six hours of the manure release.

4. On December 19, 2011, Jon Ryk, DNR Field Office 6 Environmental Specialist, responded to the manure release report and met with The Maschhoffs personnel. It was estimated that an undetermined amount less than 9,500 gallons of manure had been released. The manure flowed from a building to three dry dams, through the dam pipe and traveled down a dry creek bed. The Maschhoffs repaired

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: THE MASCHHOFFS, LLC

the damaged standpipes, protected the drain tile intake, and dammed up the culvert. The Maschhoffs contacted a contractor to construct an earthen berm in the creek bed. On December 20, 2011, The Maschhoffs flushed water through the impacted creek bed and pumped the manure laden water to the earthen manure lagoon. On December 21, 2011, Mr. Ryk met with The Maschhoffs personnel. The Maschhoffs personnel indicated that approximately 100,000 gallons of water was flushed through the creek to remove the manure and all of the manure laden water was pumped to the earthen manure lagoon. None of the water used for flushing the dry creek bed traveled beyond the dam and none entered the Des Moines River.

5. On December 29, 2011, DNR Field Office 6 personnel visited the facility and observed ongoing manure flushing. On January 6, 2012, The Maschhoffs submitted the 30 day written release report for the December 19, 2011 incident. In February 2012, DNR Field Office 6 personnel spoke to The Maschhoffs personnel who informed the field office that approximately 684,000 gallons of water had been flushed through the manure impacted stream section. In March 2012, DNR Field Office 6 personnel tested the ammonia levels in the creek area and the ammonia levels were below 1.0 ppm.

6. On August 20, 2013, DNR Field Office 6 environmental specialist, Josh Sobaski, conducted an NPDES animal feeding operation inspection of The Maschhoffs' facility. Mr. Sobaski conducted an unformed manure storage structure inspection of both lagoons, a walk around the facility, and a manure management plan inspection. Mr. Sobaski noted that the manure application records for the fields applied to in 2013 were not available for review. The Maschhoffs personnel advised Mr. Sobaski that because seasonal manure application had not yet been completed, such records were being prepared. Mr. Sobaski also noted the facility needed to add rip-rap to the lagoon for North Unit #1. On September 3, 2013, DNR issued a Letter of Noncompliance to The Maschhoffs for the recordkeeping violation.

7. On November 4, 2013, a representative from The Maschhoffs contacted DNR Field Office 6 and stated that a manure release occurred at the South Unit #1. The Maschhoffs representative explained that an unknown amount of manure had been released from a standpipe. The Maschhoffs personnel started to contain the manure release by digging a pit in the dry creek area.

8. On November 5, 2013, Ryan Stouder, DNR Field Office 6 environmental specialist, met with The Maschhoffs personnel to evaluate the cleanup efforts. The Maschhoffs personnel explained that the manure release occurred after an employee pulled plugs off two stalls of the shallow pit under one of the swine buildings. At an unknown time thereafter, the below ground piping became obstructed and the manure discharged out of the standpipe between the earthen manure lagoon and the building. The manure flowed to the northeast through a grassed field to below the north portion of the earthen manure lagoon and then entered into a dry creek bed. This same type of operational issue caused the

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: THE MASCHHOFFS, LLC

December 2011 release. Mr. Stouder collected water samples from the impacted creek area as well as from a non-impacted tributary. The sample from the pool in the creek by the barn indicated an E.coli concentration of >2,400,000 [MPN]/100mL; an ammonia concentration of 1,600 mg/L; a BOD, 5 day concentration of >7,800 mg/L; and a total solids concentration of 8.5%. The sample from the pool by the pond indicated an E.Coli concentration of >2,400,000 [MPN]/100mL; a BOD, 5 day concentration of >780 mg/L; and a total suspended solids concentration of 690 mg/L. The sample from the non-impacted tributary indicated an E.Coli concentration of 5,500 [MPN]/100m.; an ammonia concentration of 0.59 mg/L; a BOD, 5 day concentration of 36 mg/L, and a total suspended solids concentration of 370 mg/L. The field test from the impacted creek area indicated an ammonia level above 3.0 ppm. The Maschhoffs started to flush the creek with water from a pond located on The Maschhoffs property to remove the manure from the creek. On November 6, 2013, Mr. Stouder returned to the facility. The flushing with the pond water to clean up the manure was on-going. The field test indicated an ammonia level above 3.0 ppm. The pond water that was being utilized for flushing the creek had an ammonia concentration of 0.4 ppm. On November 7, 2013, Mr. Stouder visited the facility. The flushing of the pond water to clean up the manure was on-going. The field test indicated an ammonia level of above 3.0 ppm. On November 8, 2013, Mr. Stouder returned the facility. The flushing with the pond water to clean up the manure was on-going. The field test indicated an ammonia level of 2.3 ppm.

9. On November 14, 2013, Mr. Stouder returned to the facility to evaluate the cleanup efforts. The flushing of the pond water to clean up the manure was on-going. The field test indicated an ammonia level below 1.0 ppm. The Maschhoffs advised Mr. Stouder that it intended to finish the flushing of the creek.

10. On November 19, 2013, DNR issued a Notice of Violation letter for the violations as a result of the November 2013 manure release. The letter required the facility to submit a 30 day written report to the field office and to provide a letter detailing the procedures to ensure future manure release response efforts and changes. On November 27, 2013, The Maschhoffs submitted the 30 day written report to the field office.

11. On December 5, 2013, Mr. Stouder returned to the facility. The area of the creek that was dug out as an earthen pit was filled back in. The creek was mostly dry except for a few areas of ice covered water. The excavated soils had been placed on the inside portion of the earthen manure lagoon.

12. In January 2014, The Maschhoffs engaged with Enviro-Ag Engineering, Inc. (EAE) to design and assist with the work at the Keosauqua facility in response to the Notice of Violation letter issued on November 19, 2013. On January 24, 2014, The Maschhoffs submitted an initial report from EAE. The report stated that following EAE's review of The Maschhoffs' Keosauqua facility the following conclusions and recommendations were made: 1) the plumbing system

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: THE MASCHHOFFS, LLC

required updates; 2) the release of the liquid manure was a direct result of the outdated design of plumbing at the site; 3) movement of the manure from the buildings to storage through 6" piping that had 45° connections at various points along the pathway and buildup of solids at these connection points poses the risk of the pipes becoming blocked; 4) final design will repair the outdated piping and the connection points between the piping and the collection sumps; and 5) EAE will review all other design and operational aspects of the facility as part of a final review and report. The report also stated that the final site inspection will be completed by the end of February 2014; the design, review, plans and specifications shall be completed by the end of March 2014; and the measures shall be completed late spring/early summer 2014.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code sections 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 6's investigations in December 2011 and November 2013, it was determined that manure from The Maschhoffs' facility had been discharged to the dry creek. The above-mentioned facts indicate violations of these provisions.

3. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. During DNR Field Office 6's investigations in December 2011 and November 2013, it was determined that manure from The Maschhoffs' facility had been discharged to the dry creek. The above facts indicate violations of this provision.

4. 567 IAC 65.2(9) require that a person storing, handling, transporting or land applying manure from an animal feeding operation who becomes aware of a release shall notify DNR of the occurrence or release as soon as possible but not later than six hours after onset or discovery of the release. The Maschhoffs were aware of the November 2013 manure release but failed to notify the DNR of the release within six hours. The above-mentioned facts indicate a violation of these provisions.

5. 567 IAC 65.17(13) states that records shall be maintained by the owner of a confinement feeding operation who is required to submit a manure management plan. This recorded information shall be maintained for three years following the

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: THE MASCHHOFFS, LLC

year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the confinement feeding operation or at a residence or office of the owner or operator of the facility within 30 miles of the site. During the August 2013 visit by DNR Field Office 6, it was determined the manure management plan records were not available for review. The above mentioned facts indicate a violation of this provision.

6. Based on the information provided by The Maschhoffs and EAE, the DNR has determined that there is no likelihood that the violations identified in Paragraphs 2 - 4, Section IV. Conclusions of Law will recur if The Maschhoffs implement the requirements set forth in Paragraphs 1 - 4, Section V. Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and The Maschhoffs agrees to do the following:

1. Within 10 days of the state the Director signs this administrative consent order, The Maschhoffs shall submit to DNR Field Office 6 a protocol of the steps it shall take to ensure compliance with the state's animal feeding operation laws at the aforementioned facility until the measures set forth below are completed. The protocol shall detail the steps that shall be taken to ensure proper manure drainage to the unformed structures every time the pit plugs are pulled until the measures required in paragraph 4, below, are completed;
2. The Maschhoffs shall submit the final report from EAE to DNR Field Office 6 within 30 days of the date the Director signs this administrative consent order;
3. The Maschhoffs shall submit the design, review, plans and specifications for the measures to DNR Field Office 6 within 60 days of the date the Director signs this administrative consent order. The measures shall include the repair of the plumbing system and the connection points at the collection sump, as well as any other measures determined necessary by EAE's final report;
4. The Maschhoffs shall complete the construction of the measures within 120 days of the date the Director signs this administrative consent order; and

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: THE MASCHHOFFS, LLC

5. The Maschhoffs shall pay an administrative penalty in the amount of \$10,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$10,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” The Maschhoffs gained an economic benefit by failing to properly contain the manure from its facility and delayed the costs associated with proper controls and improvements at the facility. The facility has also delayed the costs associated with proper recordkeeping. Based on the above facts, an economic benefit of \$4,000.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 6 documented two manure discharges. These violations threaten the integrity of the regulatory program because compliance with animal feeding operation requirements is required of all persons in this state. Due to the size and magnitude of the releases, the DNR Field Office was required to expend a large amount of staff time responding to and assisting the facility with the releases. Therefore, \$3,000.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: THE MASCHHOFFS, LLC

Culpability –The Maschhoffs has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Therefore, \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of The Maschhoffs. For that reason The Maschhoffs waives the right to appeal this administrative consent order or any part thereof. By entering into this administrative consent order, The Maschhoffs is settling a disputed matter between itself and the DNR, and does not admit that the alleged violations set out in Section III of this administrative consent order occurred. Except for the purposes of implementing and enforcing this administrative consent order, nothing in this administrative consent order constitutes an admission by The Maschhoffs or creates rights, substantive or procedural, that can be asserted or enforced, with respect to any claim of or legal action brought by any person who is not a party to this administrative consent order.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 6th day of
February, 2014.


THE MASCHHOFFS, LLC

Dated this 4th day of
February, 2014.

Facility #60129; Kelli Book, DNR Field Office 6, EPA, VIII.D.1.a, VIII.D.3.a

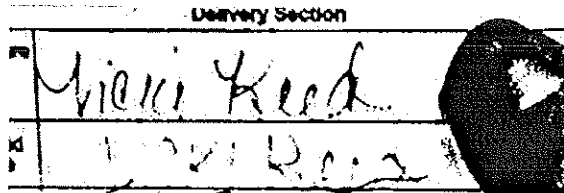


Date Produced: 02/17/2014

STATE OF IOWA:

The following is the delivery information for Certified Mail™ item number 7199 9991 7032 4162 8490. Our records indicate that this item was delivered on 02/11/2014 at 09:54 a.m. in DES MOINES, IA 50309. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 2895861 21641170



Date Produced: 02/17/2014

STATE OF IOWA:

The following is the delivery information for Certified Mail™ item number 7199 9991 7032 4162 8506. Our records indicate that this item was delivered on 02/12/2014 at 08:09 a.m. in NEW ULM, MN 56073. The scanned image of the recipient information is provided below.

Signature of Recipient :
(Authorized Agent)

Jean M KoResch
Jean M KoResch

Address of Recipient :

P.O. Box
458

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 2895861 21641170